IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 785 of 1990
with
CROSS-OBJECTION No..3516 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
PRATIK KANTILAL PARIKH & 1 - Respondent(s)

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Appearance :
MR MD PANDYA for Appellant(s) : 1,
MS SRUSTI THULA with MR YN OZA for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 13/12/2007

ORAL JUDGMENT :

1. The appellant has called into question the award dated 26.5.1989 of Motor Accident Claims Tribunal (Main), Vadodara in Motor Accident Claims Petition No.533 of 1986 in favour

of respondent No.1 who was awarded total compensation of Rs.5,66,000/- on account of accidental injuries caused to him on 20.12.1985.

2. According to the impugned award and the evidence on record, the appellant was going on a scooter on 20.12.1985 at about 3.00 p.m. while the bus of the appellant driven by respondent No.2 came from opposite direction and, due to collision between the two, the claimant sustained injuries on his head.

3. The appeal was argued mainly on the grounds that the Tribunal had erred in attributing 100% negligence to driver of the bus since negligence on the part of the claimant himself was also evident, insofar as he had dashed with the bus from the opposite direction. It was also argued that the amount of compensation and the calculation thereof were grossly on higher side in the peculiar facts of the case, particularly in view of the claimant having only suffered temporary partial disablement and loss of future income was not proved.

4. It was seen from the record that the accident had happened in broad day light on a

wide road which could have permitted both the vehicles to cross each other with safe margin, even though there was a curve on the road at the spot of the accident. The say of the appellant that the claimant was dazzled by the sunlight and, therefore, he had come on the wrong side of the road was rightly not believed by the Tribunal and excessive speed of the bus was proved by the fact of the bus running for about 35 ft. after the accident. Therefore, there is no substance in the argument that negligence on the part of the claimant had contributed in occurrence of the accident.

5. As for the calculation of the amount of compensation, it was seen from the record that the claimant had left the hospital on his own on the day of the accident and had claimed to have been treated by other doctors who were not examined. Under such circumstances, even accepting the version of the claimant that he had left the hospital on account of non-availability of neurosurgeon in the government hospital and stayed in the clinic of a neurosurgeon for about one or two months, direct medical evidence in the form of deposition of Dr.Jvalit Shah Ex.29, as discussed in para 44, was based upon the complaints of the claimant. The complaints were to the effect that the claimant suffered sudden

falls with loss of consciousness, difficulty in speech, loss of memory, severe lack of confidence, anxiety, depression and hesitation. The claimant was, for the first time, seen by the doctor on 22.7.1988, i.e. after two-and-half years, and he found the claimant to be suffering from traumatic amnesia. The claimant was found, at the last examination on 10.3.1989, to have his epileptical fits under control and, in his opinion, the chances of his recovery were between "fair" and "not bad" so far as epileptical fits were concerned. According to his opinion, it would have been difficult for the claimant to do any business which required door-to-door visits or travels. However, physical functions like walking, eating etc. were found to be normal by the doctor. It was noticed from the deposition of claimant himself, at Ex.28, that he was assisted by his wife who was present in the court and remarkably she was not examined in evidence to depose as to the difficulties faced by the claimant or the frequency of any epileptical fits or loss of memory. In such circumstances, it could not have been presumed that the claimant could have lost his earning capacity to the extent of almost 75% and, therefore, the figure of yearly loss of future income to the extent of Rs.30,000/- for a period of 15 years was evidently exaggerated. The case of the claimant

that he used to earn Rs.70,000/- to Rs.80,000/- from his flourishing business was also not fully supported by any evidence which was led in the form of assessment orders at Ex.47 to 49 and at Ex.41. While his total taxable income for assessment year 1983-84 was Rs.15,210/-, for assessment year 1984-85 Rs.17,050/- and for assessment year 1985-86 Rs.33,397/-, it was suddenly stated to have jumped, vide Ex.41, for the assessment year 1986-87, to Rs.63,450/-, the Tribunal had obviously erred in assuming that business of the claimant involved moving from house-to-house for carrying on his business.

6. In view of the evidence as aforesaid, even accepting the figure of yearly loss of income of Rs.30,000/-, the assumption of continuation of loss for the next 15 years being not justified or supported by evidence and, therefore, multiplying yearly loss by 10 years, the amount under the head of "loss resulting from physical disability or incapacity to earn to the full potential" has to be reduced by Rs.1,50,000/-. The remaining figures for compensation on other different heads were not in serious controversy.

7. Learned counsel for the appellant, Ms.Srusti Thula, relied upon recent judgment of

this Court in ***Mahendrakumar Manilal Patel v. Ramjibhai Dalsibhai Chaudhary [2006 (1) GLR 637]*** to submit that in case of victim or deceased being aged 34 at the time of accident, multiplier of 17 could be applied in the peculiar facts and circumstances of the case. This judgment, however, is not applicable in the facts of the present case where the disability did not appear to have continued for more than ten years. Similarly, judgment of the Supreme Court in ***S.Chandra and Others v. Pallavan Transport Corporation [(1994) 2 SCC 189]*** relied upon by the learned counsel was not applicable in the facts of the present case.

8. Accordingly, appeal is partly allowed with cost and the direction that total amount of compensation awarded to the respondent No.1 shall stand reduced by Rs.1,50,000/- with consequential reduction in the amounts of cost and interest.

9. In view of the above discussion, the Cross-Objection is dismissed.

Sd/-
(D.H.Waghela, J.)

(KMG Thilake)